

Docket No. 5725.0134-01
Serial No. 09/172,853

Remarks

Claims 1 - 24 (Claim 24 was added in the July 6, 1999 Amendment) have been canceled without prejudice or disclaimer and may be pursued in a continuation application. Claims 25 - 67 have been added. At the interview, the Examiner requested an express showing of written description support for the new claims. That support is set forth in the following Table.

DESCRIPTION		support can be found at least at: PAGE LINE		NEW CLAIMS
a cosmetic composition		original claim 1		25-27, 34-36, 43-45, 52, 53, 57, 58
an ethyl acrylate/methyl methacrylate/methacrylic acid/acrylic acid copolymer		6	14-19	25, 26, 28-31, 34, 35, 37-40, 43, 44, 46-49, 52-56, 59-62, 64- 67
	said copolymer has a glass transition temperature of approximately 30C	7	4-8	26, 29, 35, 38, 44, 47
	as an aqueous dispersion			
	comprising 25% by weight of the copolymer			
an amphoteric polymer chosen from	octylacrylamide/acrylates/butylaminoethyl methacrylate copolymers	20	9-12	25-33

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an acrylates copolymer		7	7 (which refers to Amerhold DR-25, alternatively referred to as acrylates copolymer according to the ICID)	27, 32, 33, 36, 41, 42, 45, 50, 51, 57, 58, 63
a hair spray		31-36	Ex. 1-3	28-33, 37-42, 46-51, 54-56, 58, 59, 60, 63, 65, 67
	further comprising a propellant	29	10-12	30, 31, 33, 39, 40, 42, 48, 49, 51, 66
	chosen from flourinated hydrocarbons	29	10-14	31, 40, 49
at least one anionic polymer chosen from	ethyl ester of PVM/MA copolymers	10, 11, 12	10, penultimate line wherein U.S. Pat. No. 2,723,248, which refers to partial ester of vinyl methyl ether-maleic anhydride at col. 3, lines 41-50, is incorporated by reference and 11, lines 1-2, reference to Gantrez ES and 12, last three lines (reference to monoesterified maleic acid anhydride/methyl vinyl ether copolymer)	34-42

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a polymer chosen from	acrylates/hydroxyesters acrylates copolymers	39	Ex. 6 (which refers to Acudyne 255, which is referred to as acrylates/hydroxyesters acrylates copolymers according to the ICID)	43-56, 64-67
water		37-38	Ex.4	52-56, 64-67
alcohol		37-38	Ex.4	52-56, 64-67
aminomethylpropanol		37-38	Ex.4	53, 55, 65, 67
fragrance		30	1-6	53, 55, 65, 67
protein		30	1-6	53, 55, 65, 67
preserving agent		30	1-6	53, 55, 65, 67
conditioning agent		30	1-8	53, 55, 65, 67
basifying agent		29, 37-38	6-9 Ex.4 (referring to AMP)	53, 55, 65, 67
wherein said . . . copolymer is at least partially neutralized		31-39	Examples 1-6	56
a methacrylic acid/ hydroxyethyl methacrylate/ butyl acrylate/methyl methacrylate tetrapolymer		39	Ex. 6 (3-5)	57-62
	said . . . tetrapolymer is an aqueous dispersion containing 41% of active material	39	Ex. 6 (3-7)	58, 60
an aerosol hair spray		37-38	Ex. 4	61, 66
a pump action hair spray		38-39	Examples 5, 6	62, 64

at least one anionic polymer chosen from	monoesterified maleic anhydride /methyl vinyl ether copolymers	12	last three lines	63
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As explained at the interview, these claims are patentable for all the reasons stated in the July 6, 1999 Amendment with respect to the canceled claims. Applicant respectfully submits that all the claims, as added herein, are allowable over the cited art and requests early indication of the same.

As discussed at the interview, additional evidence demonstrates that the claims newly presented herein, are not *prima facie* obvious over the prior art. This will now be explained.

The Advertisement Buttresses the Patentability of the New Claims

In the Advertisement cited in the Information Disclosure Statement, "Amerchol Mixes Resins to Improve 55% VOC Hair Sprays," Amerchol reports that prototype products involving the combination of AMERHOLD DR-25 and a second resin performed better than products using only AMERHOLD DR-25 resin. Two "better performing" prototypes are reported to be Amerhold DR-25 with either the amphoteric polymer Amphomer LV-71 or Omnidrez 2000 product, as shown in the Table in the right-hand column.

Positive Effect on Claims 25-33

The excellent results reported with the amphoteric polymer Amphomer LV-71 and AMERHOLD DR-25 further demonstrate the lack of a *prima facie* case based on the art of record with respect to claims 25 - 33 presented herein. These claims literally cover both AMERHOLD DR-25 and Amphomer LV-71.

Amphomer LV-71 is defined in the International Cosmetic Ingredient Dictionary and Handbook (hereafter, "ICID"), Seventh Edition, by the INCI name: octylacrylamide/acrylates/butylaminoethyl methacrylate copolymer. This amphoteric copolymer literally falls within new claims 25 -33, finding express support at page 27 of the specification, the last three lines and page 28, the first two lines. A copy of pp. 872-873 of the ICID, relating to octylacrylamide/acrylates/butylaminoethyl methacrylate copolymer, is filed herewith for the Examiner's convenience.

"Acrylates copolymer," recited in claims 27 and 32 is the INCI name assigned to AMERHOLD DR-25. See p. 26 of ICID, filed herewith. AMERHOLD DR-25 is expressly recited in the specification at page 7, first full paragraph, thus providing support for the term "acrylates copolymer." The term ethyl acrylate/methyl methacrylate/methacrylic acid/acrylic acid copolymer recited in claims 25 and 28 is expressly identified at p. 37, lines 1 - 4 as a name for AMERHOLD DR-25. See also p. 35, lines 1 - 4.

Thus, the combination of AMERHOLD DR-25 and Amphomer LV-71 falls literally within the claims. As noted at the interview, the Advertisement is not prior art. It nonetheless stands as an unsolicited, third party testimonial of the merits of the invention recited in new claims 25-33, all literally covering the specific combination of the acrylic polymer Amerhold DR-25 with the amphoteric polymer Amphomer LV-71.

Positive Effect on Claims 34-42 and 63

As noted above, another of the "better performing" prototypes reported in the Advertisement was the combination of Amerhold DR-25 with the anionic polymer Omnirez 2000 product. New claims 34-42 and 63, like claims 25-33, recite an acrylic copolymer of "acrylates copolymer" or an ethyl acrylate/methyl methacrylate/methacrylic acid/acrylic acid copolymer, both of which terms literally covering the specific acrylic polymer Amerhold DR-25.

In addition, each of claims 34-42 and 63 also recites at least one anionic polymer selected from the ethyl ester of PVM/MA copolymers, the INCI name of the Omnirez 2000 product. See p. 511 of ICID, filed herewith, indicating that another tradename for the ethyl ester of PVM/MA copolymers is Gantrez ES 225. The specification at the paragraph bridging pp. 10-11 expressly refers to Gantrez ES products. As indicated in ICID, page 2018, filed herewith, there are only two types of esters reported in Gantrez ES products, ethyl and butyl.

Further, the definition of the ethyl ester of PVM/MA copolymers at p. 511 states that it is a polymer of the partial ethyl ester of the polycarboxylic resin formed from vinyl methyl ether and maleic anhydride. U.S. Patent 2,723,248 is specifically incorporated by reference in the specification at page 10, penultimate line. Col. 3, lines 41 - 50, of this patent, copy filed herewith, specifically refers to the partial ester of vinyl methyl ether-maleic anhydride. In view of the reference to Gantrez ES products in the specification (ethyl or butyl ester) and the incorporation by reference of U.S. Patent 2,723,248, the specification reasonably conveys possession of an ethyl ester.

Therefore, new claims 34-42 and 63 all literally cover the specific combination of Amerhold DR-25 with the anionic polymer Omnidrez 2000 product. The claim, moreover, is, as explained, fully supported in the specification. The Advertisement, singing the praises of this combination, establishes even further the lack of *prima facie* case of new claims 34-42 and 63 based on all the art of record.

The Avon Product Buttresses the Patentability of New Claims 43-67

The non-prior art Avon Techniques products, exemplified in the product document submitted herewith, are commercial products, touting "extra hold and all-over control." The specification explains that the present invention can provide sprays that are more diffuse. Notably, the Avon Techniques packaging

represents that the products will "spray on evenly." In other words, the packaging extols the excellent performance characteristics of the Avon Techniques product. To the applicant, this is no surprise.

In particular, the Avon Techniques, as is evident from the product labeling, uses "acrylates copolymer." As explained above, that is the INCI name that describes Amerhold DR - 25, expressly falling literally within the scope of new claims 25-67 and utilized in Example 6 at p. 39 of the specification.¹

Further, Avon Techniques utilizes, as is also evident from the product labeling, acrylates/hydroxyesters acrylates copolymer, defined at p. 27 of ICID, filed herewith. A commercial source of acrylates/hydroxyesters acrylates copolymer is reported in ICID, p. 27, to be Acudyne 255. Acudyne 255 is expressly disclosed in Example 6, p. 39 of the specification.

Claims 43-67, supported in the specification, literally cover the Avon Techniques products, depending on whether the claims recite pump action hair spray and/or aerosol hair spray. Applicants recite in the specification the excellent performance characteristics that a claimed product can have.

¹ A typographical error in Example 6 has been corrected. Specifically, "terpolymer" was obviously incorrect since four monomers are recited. Thus, the copolymer is technically a tetrapolymer, and this correction has been made in the specification and does not constitute new matter.

Docket No. 5725.0134-01
Serial No. 09/172,853

A third party, Avon, has marketed two commercial products literally covered by claims 43-67, touting its excellent performance characteristics. Avon has thus provided an unsolicited witness of the merits of the invention recited in claims 43-67. This demonstrates even more clearly why claims 43-67 are not *prima facie* obvious over the art of record.

Summary

For all the reasons stated, there is no *prima facie* case of obviousness of any of the claims of record. The Examiner is respectfully requested to examine and allow all the claims, as amended and newly presented. If a further interview would be helpful or if the Examiner has any questions, he is invited to telephone either of the undersigned.

If there is any fee due in connection with the filing of this Amendment and Statement, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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